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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MONTGOMERY,
Petitioner,
v.
SAN BERNARDINO SUPERIOR
COURT, *et al.*
Respondents.

Case No. ED CV 16-0069 AG (JCG)

**ORDER SUMMARILY DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS FOR LACK OF
JURISDICTION AND DENYING
CERTIFICATE OF APPEALABILITY**

On January 4, 2016, petitioner Edward Montgomery (“Petitioner”), a California prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”). [Dkt. No. 1.] Therein, Petitioner challenges his sentencing court’s imposition of a restitution fine. (Pet. at 1-15.)

However, as a rule, a district court may *only* entertain a habeas petition by a state prisoner “on the ground that he is *in custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a) (emphasis added). And the Ninth Circuit has explicitly held that a challenge to a restitution fine does not challenge a petitioner’s “custody,” and is therefore insufficient to confer federal habeas jurisdiction. *Bailey v. Hill*, 599 F.3d 976, 980 (9th Cir. 2010) (“2254(a) does not

confer jurisdiction over a state prisoner's in-custody challenge to a restitution order imposed as part of a criminal sentence."").

As such, Petitioner's claim is not cognizable on federal habeas review, and this Court lacks subject matter jurisdiction to consider it.

For the foregoing reasons, **IT IS ORDERED THAT** this action be **SUMMARILY DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

IT IS FURTHER ORDERED that a certificate of appealability be **DENIED** because Petitioner has not shown that jurists of reason would find it debatable whether this Court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

LET JUDGMENT BE ENTERED ACCORDINGLY.



DATED: February 01, 2016

HON. ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE